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MARIO GUTIERREZ DIAZ

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MARIO GUTIERREZ DIAZ, an
individual,

Plaintiff,

vs.

FORD MOTOR COMPANY, a
Delaware Corporation, and DOES 1
through 10, inclusive,

Defendants.

Case No.: 3:23-cv-01506-JSC

*Assigned to the Hon. Magistrate Judge
Jacqueline Scott Corley in Courtroom 8*

**PLAINTIFF MARIO GUTIERREZ
DIAZ'S NOTICE OF MOTION AND
MOTION TO REMAND;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Filed Concurrently with Declaration of
Allen Amarkarian with Exhibits Thereto
and [Proposed] Order]

HEARING

Date: May 25, 2023

Time: 10:00 a.m.

Courtroom: 8

Lawsuit Filed: January 30, 2023

Trial Date: Not set.

1 **TO THE HONORABLE COURT, ALL INTERESTED PARTIES AND**
2 **TO THEIR RESPECTIVE ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that on May 25, 2023, at 10:00 a.m., in
4 Courtroom 8 of the Northern District Court of California, Plaintiff MARIO
5 GUTIERREZ DIAZ (“Plaintiff”), will and hereby does move this Court for an Order
6 remanding the above-entitled action back to the Superior Court of the State of
7 California for the County of San Francisco.

8 This motion is based upon the supporting Memorandum of Points and
9 Authorities, the Declaration of Allen Amarkarian, Esq. attached hereto, the papers
10 and pleadings on file in this action, and upon such further matters that may be
11 presented at the hearing.

12 Dated: April 19, 2023

13
14 Respectfully submitted,
15 **QUILL & ARROW, LLP**

16 *Kevin Y. Jacobson*

17 Kevin Y. Jacobson, Esq.
18 Allen Amarkarian, Esq.
19 Attorneys for Plaintiff
20 **MARIO GUTIERREZ DIAZ**



MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND PROCEDURAL HISTORY

On January 30, 2023, Plaintiff MARIO GUTIERREZ DIAZ (“Plaintiff”), filed this action in the Superior Court of California for the County of San Francisco, against Defendant, FORD MOTOR COMPANY (“Ford” or “Defendant”), alleging breach of implied and express warranties under the California Song-Beverly Consumer Warranty Act (“Song-Beverly” or “the Act”), arising out of his purchase of a 2019 Ford F-150 (“Subject Vehicle”). (Declaration of Allen Amarkarian ¶ 4; Exhibit 1.)

At the outset, Plaintiff highlights to the court that Plaintiff’s Motion to Remand (“Motion”) is brought solely on the grounds that Ford’s untimely Notice of Removal is procedurally defective, and thus remand is mandated, pursuant to 28 U.S.C. §§ 1446 *et seq.*, and 1447(c). Critically, Plaintiff does not dispute Ford’s allegations concerning its satisfaction of 28 U.S.C. § 1332 *et seq.*’s requirements. Rather, Plaintiff contends that Ford’s allegations concerning Subject Matter Jurisdiction have been rendered moot by the untimely filing of its Notice of Removal. (Declaration of Allen Amarkarian ¶ 5.) As such, Plaintiff has never contested, nor intends to contest, the amount in controversy alleged by Ford, for purposes of Subject Matter Jurisdiction, as they are immaterial to establishing the procedural defect inherent in Ford’s Notice of Removal.

i. Procedural Posture Mandating Remand

On February 6, 2023, Plaintiff personally served a copy of the Complaint and Summons on Ford. (Declaration of Allen Amarkarian ¶ 6; Exhibit 2) On March 9, 2023, Ford proceeded with filing its Answer in State Court, in lieu of removing the matter to federal jurisdiction. 28 U.S.C. § 1446(b)(1) [“Section 1446(b)(1)”] (removing party must remove action within **30 days** after service of summons or complaint). ECF No. 1; (Declaration of Allen Amarkarian ¶ 7; Exhibit 3.)

On March 30, 2023, Ford filed its Notice of Removal with the Northern District, relying on 28 U.S.C. §§ 1332 *et seq.*, 1441 *et seq.*, and 1446(b)(3) (“Section 1446(b)(3)”). However, Ford’s Notice of Removal comes **twenty-one (21) days** after



1 the thirty (30) day deadline for removal, as prescribed by 28 U.S.C. § 1446(b)(1).
 2 ***Emphasis added.*** (Declaration of Allen Amarkarian ¶ 8; Exhibit 4.)

3 This Court should not be misled by Defendant’s specious application of Section
 4 1446(b) and alleging that Defendant’s Notice of Removal was timely filed. As the
 5 record clearly reflects that Ford had sufficient information to plausibly allege
 6 satisfaction of the jurisdictional threshold, and overall removability of the action,
 7 during its statutory removal window. *See Dart Cherokee Basin Operating Co., LLC v.*
 8 *Owens*, 574 U.S. 81, 89 (2014) (“*Dart*”) (the Supreme Court establishing that notice
 9 of removal merely requires ***plausible allegation*** that the Section 1332(a)’s
 10 jurisdictional threshold is met; ***evidentiary submissions concerning the amount in***
 11 ***controversy are only required when either plaintiff, or the court, questions the***
 12 ***propriety of removal***); accord *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193,
 13 1197 (9th Cir. 2015) (“*Ibarra*”) (the Ninth Circuit reverberating the appropriate
 14 standard established by the Supreme Court for removal concerning the jurisdictional
 15 threshold.). ***Emphasis added.***

16 Moreover, notice of removability is determined by the “four corners of the
 17 applicable pleadings, not through subjective knowledge or a duty to make further
 18 inquiry.” *Harris v. Bankers Life & Cas. Co.*, 425 F3d 689, 694 (9th Cir. 2005);
 19 *Lovern v. General Motors Corp.*, 121 F3d 160, 162 (4th Cir. 1997); *Whitaker v.*
 20 *American Telecasting, Inc.*, 261 F3d 196, 206 (2nd Cir. 2001) (relevant test is what
 21 document said, not what defendant purportedly knew).

22 As of February 6, 2023, Ford had sufficient information to plausibly allege
 23 satisfaction of the jurisdictional threshold pursuant to 28 U.S.C. § 1332, however,
 24 Defendant failed to timely remove this matter. Accordingly, pursuant to 28 U.S.C. §
 25 1447(c), this Court is required to remand this matter to State Court where it rightfully
 26 belongs.

27 **II. STANDARD OF REVIEW**

28 It is well-settled law that remand must be ordered for either a lack of subject
 matter jurisdiction, but more importantly with respect to this matter, for “any defect in



1 removal procedure.” *See Buchner v. FDIC*, 981 F. 2d 816, 820 (5th Cir. 1993); 28
 2 U.S.C. § 1447 (c). A district court, “...**must** act on a timely motion to remand based
 3 on a defect in removal procedure.” *Id.* at 219. **Emphasis added.** Additionally, the
 4 burden of establishing federal jurisdiction is on the party seeking removal, and the
 5 removal statute is strictly construed against removal to federal jurisdiction. *See Luther*
 6 *v. Countrywide Home Loans Servicing LP*, 533 F.3d 1031, 1034 (9th Cir. 2008); see
 7 also *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992); *Scott v. Breeland*, 792 F.2d
 8 925, 927 (9th Cir. 1986). In short, “...federal jurisdiction must be rejected if there is
 9 any doubt as to the right of removal in the first instance.” *Gaus*, 980 F.2d, at 566.

10 If at any time before final judgment it appears that a district court lacks subject
 11 matter jurisdiction, the court may remand the case to state court, either *sua sponte*,
 12 on the motion of a party. *Jones v. Houston Indep. Sch. Dist.*, 979 F.2d 1004, 1007
 13 (5th Cir.1992); *Brown v. Southwestern Bell Tel. Co.*, 901 F.2d 1250, 1254 (5th
 14 Cir.1990).

15 With respect to the procedural requirements prescribed by 28 U.S.C § 1446 *et*
 16 *seq.*, “[a] defendant seeking removal must file in the district court a notice of removal
 17 ‘containing a short and plain statement of the grounds for removal....’ 28 U.S.C. §
 18 1446(a). The Supreme Court recently held that ‘a defendant’s notice of removal need
 19 include only a plausible allegation that the amount in controversy exceeds the
 20 jurisdictional threshold,’ and need not contain evidentiary submissions. *Dart*, 135
 21 S.Ct.at 554. But ‘[e]vidence establishing the amount is required’ where defendant’s
 22 assertion of the amount in controversy is contested by plaintiffs. *Id.* ‘In such a case,
 23 both sides submit proof and the court decides, by a preponderance of the evidence,
 24 whether the amount-in-controversy requirement has been satisfied.’ *Id.* at 554.”
 25 *Ibarra, supra*, at 1197 (quoting *Dart Cherokee Basin Operating Co., LLC v. Owens*,
 574 U.S. 81, 89 (2014).)

26 Moreover, notice of removability is determined by the “four corners of the
 27 applicable pleadings, not through subjective knowledge or a duty to make further
 28 inquiry.” *Harris v. Bankers Life & Cas. Co.*, 425 F3d 689, 694 (9th Cir. 2005);



1 *Lovern v. General Motors Corp.*, 121 F3d 160, 162 (4th Cir. 1997); *Whitaker v.*
 2 *American Telecasting, Inc.*, 261 F3d 196, 206 (2nd Cir. 2001) (relevant test is what
 3 document said, not what defendant purportedly knew).

4 **III. ARGUMENT**

5 **A. Ford's Procedurally Defunct Notice of Removal Mandates Remand** 6 **to State Court**

7 It is well-settled law that a failure to comply with Section 1446(b)(a)'s thirty-
 8 day (30) limitation renders the removal procedurally defective, for which when a
 9 timely raised objection by plaintiff, mandates remand. See *Emrich v. Touche Ross &*
 10 *Co.*, 846 F.2d 1190, 1192 n. 1 (9th Cir.1988); 28 U.S.C. § 1447 et seq.; *see also*
 11 *Maniar v. F.D.I.C.*, 979 F.2d 782 (9th Cir. 1992) ("*Maniar*"). Moreover, when there
 12 is more than one defendant named in the action, all defendants must unanimously
 13 consent to the removal. *Hewitt v. City of Stanton*, 798 F.2d 1230, 1232 (9th Cir.1986).
 14 While district courts may remand an action for lack of subject matter jurisdiction at
 15 any time before a final judgment, the Ninth Circuit has distinguished between
 16 jurisdictional and procedural defects, holding that the latter does not confer discretion
 17 to remand *sua sponte*. See *Kelton Arms Condominium Owners Ass'n, Inc. v.*
Homestead Ins. Co., 346 F.3d 1190 (9th Cir. 2003); *see also Maniar*, at 785).

18 Here, Ford's procedurally defunct Notice of Removal is much more
 19 straightforward, as none of the limitations identified by the controlling authorities are
 20 applicable. First, Ford is the sole Defendant and thus the rule of unanimity is not
 21 implicated. Second, by virtue of this timely filed Motion to Remand, as discussed
 22 *infra*, Plaintiff has timely raised his objection to Defendant's procedurally defective
 23 Notice of Removal. As such, this Court does not face the dilemma of being unable to
 24 address the procedural defect – the untimeliness of Ford's removal – *sua sponte*.

25 Thus, the removability of the instant action, in particular the amount in
 26 controversy and the diversity of citizenship, was easily ascertainable upon service of
 27 the Complaint and Summons. *Id.* As district courts are required to accept in good
 28 faith a removing party's plausible allegations concerning the satisfaction of the



1 amount in controversy requirement, Defendant's decision to ignore the thirty-day
2 (30) removal window renders its **twenty-one (21)** day late Notice of Removal,
3 procedurally defective. Accordingly, pursuant to 28 U.S.C. § 1447(c), this Court is
4 required to remand the instant action back to state court.

5 **B. Plaintiff's Motion to Remand is Timely**

6 If at any time before final judgment it appears that a district court lacks subject
7 matter jurisdiction, the court may remand the case to state court, either *sua sponte*,
8 on the motion of a party. *Jones v. Houston Indep. Sch. Dist.*, 979 F.2d 1004, 1007
9 (5th Cir.1992); *Brown v. Southwestern Bell Tel. Co.*, 901 F.2d 1250, 1254 (5th
10 Cir.1990). Dispositively, a district court must remand a case when Plaintiff timely
11 moves the Court for an order remanding the action on the grounds of a procedural
12 defect in the removal. 28 U.S.C. § 1447(c) (a motion to remand must be made within
13 thirty days (30) following the filing of the notice of removal; see *Maniar*, *supra*, at
14 785; see also *Buchner*, *supra*, at 820.

15 As established above, Defendant filed its Notice of Removal on March 30,
16 2023, **twenty-one (21) days after the March 9, 2023**, deadline to remove had run,
17 and this Court need not address nor determine whether it has Subject Matter
18 Jurisdiction over the action. ***Emphasis added.*** Thus, Plaintiff has timely filed this
19 Motion since Plaintiff's deadline to file a Motion to Remand is April 28, 2023.
20 Therefore, the Court must remand this action to the San Francisco County Superior
21 Court where it rightfully belongs.

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1 **IV. CONCLUSION**

2 Ford's Notice of Removal is procedurally defective as it failed to timely file
3 its Notice of Removal within the statutory deadline. Accordingly, Plaintiff
4 respectfully requests that this Court remand the action to State Court where it
5 rightfully belongs.

6
7 Dated: April 19, 2023

8 Respectfully submitted,
9 **QUILL & ARROW, LLP**

10 *Kevin Y. Jacobson*

11 Kevin Y. Jacobson, Esq.
12 Allen Amarkarian, Esq.
13 Attorneys for Plaintiff
14 **MARIO GUTIERREZ DIAZ**

